

ESTTA Tracking number: **ESTTA344314**

Filing date: **04/27/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Rebel Wine Co. LLC
Granted to Date of previous extension	04/28/2010
Address	100 St. Helena Hwy South P.O. Box 248 St. Helena, CA 94574 UNITED STATES
Attorney information	J. Scott Gerien Dickenson Peatman & Fogarty 809 Coombs Street Napa, CA 94559 UNITED STATES tmdept@dpf-law.com Phone:707-252-7122

Applicant Information

Application No	77793867	Publication date	12/29/2009
Opposition Filing Date	04/27/2010	Opposition Period Ends	04/28/2010
Applicant	Wagenknecht, Raymond PO Box 927090 San Diego, CA 92192 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. All goods and services in the class are opposed, namely: Wine

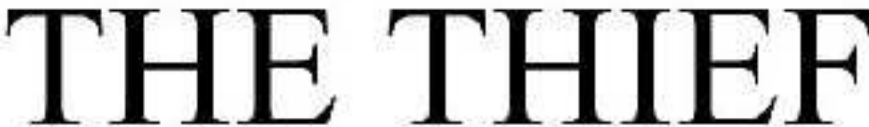
Grounds for Opposition


Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2789854	Application Date	07/30/2002
Registration Date	12/02/2003	Foreign Priority Date	NONE
Word Mark	THREE THIEVES		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 033. First use: First Use: 2003/06/01 First Use In Commerce: 2003/06/01 Wine
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U.S. Application No.	78742983	Application Date	10/28/2005
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	THE THIEF		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: Wine		

U.S. Application No.	78743007	Application Date	10/28/2005
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	LONE THIEF		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: Wine		

Attachments	78742983#TMSN.jpeg (1 page)(bytes) 78743007#TMSN.jpeg (1 page)(bytes) Notice of Opposition.pdf (4 pages)(225203 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/J. Scott Gerien/
Name	J. Scott Gerien
Date	04/27/2010

Certificate of Electronic Filing

I hereby certify that this correspondence is being electronically filed with the Trademark Trial and Appeal Board through the ESTTA system located at <<http://estta.uspto.gov>>.

Dated: 4/27/10

By Jay Kilgore
Jaymie Kilgore

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD

Rebel Wine Co. LLC,

Opposer,

vs.

Wagenknecht, Raymond,

Applicant.

OPPOSITION NO.

NOTICE OF OPPOSITION

TO THE COMMISSIONER OF TRADEMARKS:

Rebel Wine Co. LLC, a limited liability company organized under the laws of the State of California and located at P.O. Box 248, 100 St. Helena Highway South, St. Helena, California 94574 ("Opposer"), believes it will be damaged by registration of the mark HORSETHIEF CANYON for wine, shown in application Serial No. 77/793,867, filed on July 30, 2009 by Raymond Wagenknecht, a U.S. citizen ("Applicant") and hereby opposes same.

Solely for the purpose of this proceeding, Opposer alleges the following as grounds for opposition:

1. Applicant seeks to register HORSETHIEF CANYON as a trademark for wine in International Class 33 based on his intent to use the mark in interstate commerce, as evidenced by the publication of such mark on December 29, 2009 (Opposer has obtained a

ninety day extension of time to oppose this application). The application for such mark was filed with the USPTO on July 30, 2009.

2. By virtue of assignment, Opposer is the owner of U.S. Trademark Registration No. 2,789,854 issued on December 2, 2003 for the mark THREE THIEVES for wine in International Class 33 with a constructive first-use date of July 30, 2002, which precedes any known date of first use or constructive filing date for Applicant's HORSETHIEF CANYON mark for wine.
3. Opposer is the owner of U.S. Trademark Application Serial No. 78/742,983 for the mark THE THIEF for wine in international class 33 with a filing date of October 28, 2005 and a notice of allowance date of February 12, 2008, which precede any known date of first use or constructive filing date for Applicant's HORSETHIEF CANYON mark for wine.
4. Opposer is the owner of U.S. Trademark Application Serial No. 78/743,007 for the mark LONE THIEF for wine in international class 33 with a filing date of October 28, 2005 and a notice of allowance date of February 12, 2008, which precede any known date of first use or constructive filing date for Applicant's HORSETHIEF CANYON mark for wine.
5. Opposer is owner of common law rights in the tradename and trademark THREE THIEVES as used on and in association with wine since 2003, which precedes any known date of first use or constructive filing date for Applicant's HORSETHIEF CANYON mark for wine.
6. Opposer alleges that Applicant's applied-for mark is likely to cause confusion, mistake or to deceive the public. Applicant's HORSETHIEF CANYON mark for wine is similar to Opposer's THREE THIEVES, THE THIEF and LONE THIEF name and marks for wine and the respective goods with which the name and marks are used are virtually identical, substantially similar or related and said products are purchased by the same group of consumers. Accordingly, Applicant's mark is confusingly similar to Opposer's name and marks such that Applicant is not entitled to register its mark and Applicant's application should be denied in accordance with Section 2(d) of the Trademark Act of 1946, 15 U.S.C. §1052(d).

7. Opposer avers that if Applicant is granted the registration herein opposed, it would interfere with Opposer's exclusive right to use its THREE THIEVES, THE THIEF and LONE THIEF name and marks herein relied upon, all to the detriment and damage of Opposer. Accordingly, Opposer avers that for the reasons aforesaid, it will be damaged by a grant of registration to Applicant of its trademark which is the subject of Serial No. 77/793,867.

WHEREFORE, Opposer prays as follows:

1. That this Opposition be sustained;
2. That Application Serial No. 77/793,867 be rejected; and
3. That registration of the trademark HORSETHIEF CANYON shown and specified in Application Serial No. 77/793,867 be refused and denied.

Please charge Opposer's counsel's Deposit Account #503564 the \$300 filing fee for the Opposition.

Dated: 4/27/10

Respectfully submitted,

DICKENSON, PEATMAN & FOGARTY

By: 

J. Scott Gerien
Megan Healy

809 Coombs Street
Napa, California 94559
Telephone: (707) 252-7122
Facsimile: (707) 255-6876

Attorneys for Opposer
REBEL WINE CO. LLC

PROOF OF SERVICE

I declare that I am over the age of 18 years, employed in the County of Napa, and not a party to the within action; my business address is 809 Coombs Street, Napa, California 94559.

On April 27, 2010, I placed a copy of the following document(s):

- **Notice of Opposition**

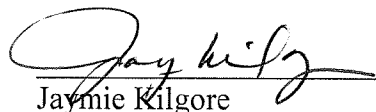
in a sealed envelope addressed as shown below and placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

The person served is as follows:

RAYMOND WAGENKNECHT
5677 OBERLIN DR. STE 204
SAN DIEGO CA 92121

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed April 27, 2010, at Napa, California.


Jaymie Kilgore
Legal Secretary